



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

WILL WILSON
ATTORNEY GENERAL

March 11, 1957

Hon. J. M. Falkner, Commissioner
State Department of Banking
Capital National Bank Building
Austin, Texas

Opinion No. WW-37

Re: Whether a state chartered building
and loan association may establish
branch offices without prior
approval of the Banking Department.

Dear Sir:

You have requested a departmental ruling on several questions concerning the fact situations set out in your original opinion request of January 18, 1957, as supplemented by your letter of January 25, 1957. These fact situations are as follows:

1. A building and loan association proposes (and has applied for permission of this department) to establish an office in a suburban area of the city in which it is domiciled with a drive-in teller's window, an interior teller's window, and a night depository vault, in which quarters it will accept new savings accounts; accept savings deposits; pay out withdrawals from savings accounts; accept payments on loans and, in general, provide every service as the home office with the exception that the appraisal of collateral and approval of loans will be made by the home office. Applications for such loans will be taken by the suburban office, however. The association plans to maintain duplicate records at both home and suburban offices.

2. A building and loan association in a city has established an office in each of approximately forty grocery stores located throughout the city, in which each of the offices may open new savings accounts; accept savings deposits; take requests for withdrawal of savings deposits (which are sent to the main office where checks are prepared and returned to the grocery store office for delivery to the customer) and close savings accounts; and handle postings to customers' pass-books in connection with these services. All records of the association are maintained in the home office.

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3. A building and loan association in one city has appointed a real estate agent located in another city as its agent for the limited purposes of accepting savings deposits; accepting payments on loans; taking applications for withdrawals of savings accounts; and taking applications for loans. Applications for withdrawal of savings deposits and for loans are serviced at the home office and all records of the association are maintained at the home office.

4. The association desires to move its home office to a suburban area of the city in which it is located and to continue to operate and maintain an office in its present downtown quarters as a branch. The proposed downtown branch office will provide every service as the home office with the exception that the appraisal of collateral and approval of loans will be made by the home office. The association plans to maintain records at both home and downtown offices.

The questions asked are: (1) May a State-chartered building and loan association establish and maintain an office which is separate and apart from its home office, but is located in the same city? (2) Is it lawful for such a building and loan association to establish and maintain an office located in a different city than its home office? (3) If such association may maintain a separate office, is approval of the Department of Banking necessary before a separate office may be established in situations (1), (2), (3), and (4), respectively? or, (4) Must prior approval be given by the Department of Banking in every instance, regardless of the type of service offered at the separate office.

Generally, a corporation may locate and carry on its business at any place within the State in which it is chartered, in the absence of any limitation expressed in its charter or in the applicable State statutes.¹

Branch banking is expressly prohibited by the Texas Constitution. Banks are further prohibited by statute from doing business in more than one place or from cashing checks or receiving deposits except in their own banking houses.² These provisions are not expressly applicable to building and loan associations and have not been made so applicable by judicial construction. No out-of-state court has construed similar statutes so as to apply to building and loan associations.

¹/ Fletcher, Private Corporations, p. 216, Sec. 2498.

²/ Article 342-903, V.C.S.

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The basic legislation governing building and loan associations chartered by the State of Texas is found in Articles 852 through 881b, V.C.S. The statutes fail to expressly state the legislative intent as to whether additional separate offices of building and loan associations may be established, and there is a dearth of authority on this question. A number of statutory references indicate that the Legislature definitely intended and understood that building and loan associations could have more than one place of business.³ While the Federal Savings and Loan Association statutes do not expressly

3/ Article 881-10 provides that for the purposes of examination the Banking Commissioner shall have the right of access to the "offices of said company"; any action provided for under Article 881a-13 "shall be brought in the county where such association has its principal place of business"; Article 881-17, "Such association shall publish a financial statement in at least one newspaper published in the place where its principal office may be located"; Article 881a-29(3) requires that the articles of association shall state the name of the "city, town or village and the county wherein the principal place of business of the association is located"; Article 881a-29(6) specifies the minimum capital of such association which minimum is graduated in accordance with the location of the "home office" of the association; Article 881a-26 specifies that one of the conditions under which an association may hold real estate for more than five years is that "there shall be a building thereon occupied by it as an office"; Subsequently, it is provided in the same article that a list of certain real estate shall be kept in the "home office" of the association. It is further provided that no building and loan association shall carry on its books the real estate and building or buildings thereon, used by it as a place of business at a valuation exceeding their actual cost without the approval of the Banking Commission. Subdivision 6(a) of Article 881a-37 provides that a building and loan association having assets of \$500,000.00, or more, may permanently invest a portion of its funds in the "purchase of lands and the erection of buildings thereon for the purpose of providing offices for the transaction of its business from portions of which, not required for its own uses, a revenue may be derived, provided that the amount so invested in a home office building shall not exceed in the aggregate the reserves, undivided profits and the permanent capital of such associations." Article 881a-53(1) directs the association to render for taxation furniture and fixtures in the county and city where its home office is located.

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authorize or prohibit the opening of branch offices, nevertheless the courts have held that Federal savings and loan associations may open branch offices.⁴ Therefore, in view of the numerous statutory allusions and the rulings of the courts on the similar Federal statutes, the first question must be answered affirmatively.

May additional offices be opened in a different city from that in which the principal or home office is located? There are two statutes indicating that the Legislature may have intended to limit branch offices to the municipality in which the home office is located.⁵ There are, however, other indications that the Legislature intended to authorize branch offices located in cities other than that in which the principal office is located.⁶ Article 881a-53 was enacted subsequent to the enactment of the statutes cited in Footnote 5. This Article requires an association to render for taxation its furniture and fixtures in the city and county in which its home office is located. The enactment of such a provision would be a vain act unless it was contemplated that branches might be located in counties other than the county of the location of the home office. Since this is the latest expression of legislative intent, it is controlling. The second question must also be answered in the affirmative. Should the branch office be established, however, in a location which would require a different amount of capital to originally organize a building and loan association in such location, the aggregate capital must, of course,

⁴/ North Arlington Nat'l Bk v. Kearney, Fed. S. & L. Ass'n, 187 Fed.2d 564 (C.A.3rd, 1951, cert. den.); Springfield Inst. v. Worchester Fed. S. & L. Ass'n, 107 N.E.2d 315 (S.Jud.Ct. Mass., 1952, cert. den.); and 1st Nat'l Bk v. First Fed. S. & L. Ass'n, 225 Fed.2d 33 (C.A.-D.C. 1955).

⁵/ Article 881a-21 requires that notice of reorganization be published in a newspaper in the "municipality in which the association is located," and Article 881a-32, which varies the minimum stock a director must hold in accordance with the population of the city or town in which the association is located, may be harmonized with the concept that branch offices may be located in a different municipality from that in which the home office is located in that the legislative intent expressed in such article merely contemplates that the association will be located in an urban area as distinguished from a rural area. It does not thereby necessarily exclude branch offices from opening in a different municipality from the one in which the home office is located.

⁶/ See Articles 881a-13 and 881a-17, both of which are discussed and set out in Footnote 3.

conform to the stricter capital requirements. The same logic is also applicable to any other requirements that the organization must meet or to which any of its officers must conform.

The Legislature, however, did not intend to allow the establishment of additional offices without some degree of control as to where such offices would be established. Before an original charter can be granted, Article 881a-2 requires the Banking Commissioner to make an investigation of the affairs of the proposed association to determine, among other things, "whether public convenience and advantage will be promoted by allowing such proposed building and loan association to be incorporated and engage in business and whether the population in the neighborhood of such place and in the surrounding territory afford a reasonable promise of adequate support for the proposed building and loan association." Unsupervised location of branch offices would result in two evils that this statute is calculated to prevent -- i.e., (1) locating a branch office where an original building and loan association could not be located; (2) increasing competition in a particular neighborhood between building and loan associations so that either the branch office or an existing building and loan association located within the neighborhood would not have a "reasonable promise of adequate support."

It is readily apparent that a building and loan association, after being granted a charter to operate in a particular community, for instance, San Marcos, should not be allowed to re-locate without prior approval of the Commissioner in Buda, Texas. Likewise, an association should not be allowed to effect the same result by opening a branch office in such a manner and thereby doing by indirection what they are prohibited from doing directly. The same logic applies with reference to opening of additional offices within a large city. When the Commissioner has found in granting a charter that the population of a given neighborhood is sufficient to promise adequate support, it must necessarily have made that decision with reference to some specific location in the particular neighborhood. If the association were free to move its principal office elsewhere within the neighborhood, the home office could conceivably be established on the periphery of the neighborhood the building and loan association was designed to serve. In such a situation two or more building and loan associations could be located in such close proximity that they would actually be serving the same neighborhood, while the population of that neighborhood would not be adequate to support both, and both would be compelled to operate on a marginal basis or dissolve. Such a situation would defeat the evident purpose of the statute, -- i.e., to insure that no

building and loan association will be established in a location which has a population insufficient to promise a reasonable probability of support. Therefore, the grant by the Commissioner is to do business in a specific location, and removal therefrom to another location, either within the neighborhood or outside of the neighborhood can only be made with prior permission of the Commissioner, based upon findings of public convenience and advantage, and that the population in the new neighborhood and in the "surrounding country affords a reasonable promise of adequate support" for the building and loan association. The rule applies with equal cogency to the establishment of additional offices. The question then arises as to when such prior approval is necessary. The answer ultimately will depend upon the principles enunciated in Article 821a-2. The apparent legislative intent is that no building and loan facility will be established in a location where the population is insufficient to support the new facility, or the existing facility. If the facility is of such a nature as to possibly raise a serious question on this issue, the Commissioner should give his approval before the new facilities are opened. Accordingly, prior approval must clearly be obtained in fact situations (1) and (4).

Suppose that a building and loan association locates its home office in a suburban area, and subsequently an association with a downtown home office decides to open a facility in the same suburban area. The residents of the area will naturally be attracted to the branch facility for the reason that they can do business with that association either near their residences or in the downtown area, with considerably more personal convenience than if they were restricted to doing business in only one location. Such a situation will reduce the population available to do business with the suburban building and loan association conceivably to the point that the population will not be sufficient to "afford a reasonable promise of adequate support" to it. This is precisely the situation that the statute intends to avoid. Such a reduction in possible available clients results from the fact that the branch facility is a branch, and not solely from the type or quantum of services rendered by it. Therefore, no distinction can be drawn in this respect between situations (1) and (4) and any other branch office, regardless of the type of services offered. In each case prior approval, based on the findings required by Article 881a-2 should be obtained.

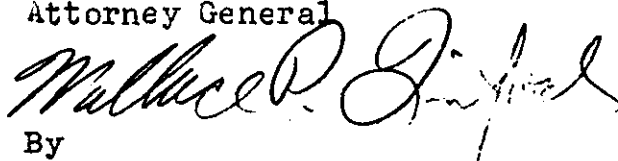
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SUMMARY

A State chartered building and loan association may maintain and establish an office separate and apart from its home office, either in the city in which its home office is located or in another city, but approval of the Department of Banking, based on the findings required by Article 881a-2, is necessary before such separate office may be established, in every instance, regardless of the type of services offered.

Very truly yours,

WILL WILSON
Attorney General



By
Wallace P. Finfrock
Assistant

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APPROVED:

OPINION COMMITTEE

H. Grady Chandler
Chairman